Supreme Court, U. S.
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No. 80-254

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

THE PEOPLE OF THE STATE OF CALIFORNIA
Petitioner,

vs.

ALMON BOYD SMITH
Respondent.

Petition for a Writ of Certiorari to the Court of Appeal, First Appellate District of the State of California

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QUESTION PRESENTED

Whether the Fourth Amendment requires that a search warrant be obtained to examine an arrestee's personal effects which police have previously inspected and inventoried in a lawful jail booking process.

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The Petitioner, the People of the State of California, respectfully prays that a writ of certiorari issue to review the judgment of the California Court of Appeal, First Appellate District, Division Three, which was entered in this proceeding on March 27, 1980. The California Supreme Court denied the People's petition for hearing on May 22, 1980.

OPINION BELOW

The opinion of the California Court of Appeal, First Appellate District, Division Three, which may be found at 103 Cal.App.3d 840, 163 Cal.Rptr. 322 (1980), appears as Appendix A to this petition.

JURISDICTION

The judgment of the California Court of Appeal became final as to that court on April 26, 1980. The California

Supreme Court denied the People's petition for hearing on May 22, 1980. (See, Appendix B.)

Application for an extension of time within which to file a petition for writ of certiorari was made to this Court and granted on July 1, 1980, extending time to and including August 20, 1980. This petition for writ of certiorari was filed prior to August 20, 1980.

This Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

On October 23, 1978, the District Attorney of Alameda County filed an information charging respondent Almon Boyd Smith with (1) embezzlement (California Penal Code § 507) and (2) grand theft (California Penal Code § 487). The information further charged that respondent had previously been convicted of two felonies. Respondent pleaded not guilty to both counts and the superior court entered denials on his behalf as to the prior felony allegations on October 24, 1978.

Respondent moved to suppress evidence on November 15, 1978 (California Penal Code § 1538.5). The superior court denied the motion on November 16, 1978.

On January 26, 1979, respondent withdrew his plea of not guilty and pleaded *nolo contendere* to embezzlement (Count I). On the District Attorney's motion, the court dismissed Count II and the prior conviction allegations, suspended the imposition of sentence and placed respondent on probation for three years on condition that he serve one year in county jail.

On March 27, 1980, the California Court of Appeal, First Appellate District, Division Three, reversed the judgment of conviction, holding that once an arrestee's personal effects have been inventoried and inspected during a booking search, they are not subject to a later warrantless search. On May 22, 1980, the California Supreme Court denied the People's petition for hearing. The California Court of Appeal issued the remittitur and entered judgment on May 27, 1980.

STATEMENT OF FACTS

About January 6, 1978, respondent Almon Boyd Smith rented a 1977 two-door blue Ford LTD (license number 617 SCY), from Budget Rent-A-Car in Berkeley, California. He gave his address as Room 47, the Berkeley Plaza Motel, 1175 University Avenue. When the car was not returned, Budget Rent-A-Car filed an auto embezzlement report on the car with the police. Berkeley police officer Michael Stafstrom, an inspector in charge of the auto theft detail, thereafter began the search for respondent.

The manager of the Berkeley Plaza Motel told the officer that respondent and his mother, Zeel Harris, had been renting motel room number 47 but had moved several months previously. The motel manager had seen Smith and his mother in a cream-colored Chevrolet, but their usual car was a blue Ford LTD. Officer Stafstrom's efforts to locate respondent's current address through a national warrant check and business address leads failed.

On February 13, 1978, at about 8:00 a.m., Stafstrom found out that Zeel Harris had been booked in the Berkeley jail the night before. Police had arrested her on a warrant from the Santa Ana Police Department for embezzlement of the 1977 cream-colored Chevrolet. The police had recovered the car at the Berkeley Plaza Motel in space number 47. The keys were not in it.

About an hour later, Officer Stafstrom decided to check the booking form on Ms. Harris to see if it would lead to a current address on her son. The only address listed on the booking form was number 47, 1175 University Avenue, but the officer noticed that Harris' purse was in the Berkeley jail locker. He went to the locker and examined it to see if it would give him a lead to Harris' latest address and thus lead him to her son. He also wanted to check if the keys to the stolen Chevrolet were in there, too.

Inside the purse, Stafstrom found a wallet which had inside both the Chevrolet keys and her driver's license. The license had a southern California address printed on the front, but on the back, in handwriting, showed a change of address to 579 Grizzly Peak, Berkeley. The officer immediately went to Grizzly Peak and there was the Ford

LTD in plain view. The Ford was taken to the police compound.

The superior court denied defendant Smith's motion to suppress evidence[1] but the Court of Appeal held this to be error and ordered the Chevrolet keys, the address on the driver's license and the Ford Ltd suppressed.

REASONS FOR GRANTING THE WRIT

This case raises an important issue involving the extension of the Warrant Clause of the Fourth Amendment to customary police procedures. May the police look through an arrestee's personal effects which are already in lawful police custody following a routine jail booking inspection and inventory procedure?

The People of the State of California submit that once an arrestee's personal possessions have been lawfully examined and inventoried by police during a booking inspection procedure, the arrestee no longer has any legitimate expectation of privacy in those effects as to their subsequent inspection by police. Police should not be required to obtain a search warrant for items which have been already lawfully exposed to their view and are held in their custody.

This case presents an opportunity for this Court to correct the California Court of Appeal's decision which is in conflict with this Court's decision in *United States v. Ed-*

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[1]Defendant Smith had standing to challenge this police examination of his mother's effects under California's vicarious exclusionary rule. *Kaplan v. Superior Court*, 6 Cal.3d 150, 156-162, 98 Cal. Rptr. 649 (1971); contrast *Jones v. United States* 362 U.S. 257, 261 (1960).

wards, 415 U.S. 800 (1973). Contrary to the California Court of Appeal's conclusion, we believe that *Edwards* is sound authority for the proposition that police may, without a warrant, inspect property previously examined and removed at booking and later stored in a property room. To the extent that the decision in *Edwards* is not dispositive of such cases, we ask this Court to define the reach and scope of that decision to preserve police procedures in situations such as that presented in this case.

The subsequent removal, examination and testing of an arrestee's personal effects following a routine booking process is a common occurrence and a critical step to the establishment of the guilt or innocence of the accused. Police nationwide need firm guidelines to judge whether their post-booking procedures in the treatment of an arrestee's effects comports with the demands of the Fourth Amendment.

ARGUMENT

POLICE MAY LAWFULLY EXAMINE THE PERSONAL EFFECTS OF AN ARRESTEE WHICH HAVE BEEN PREVIOUSLY EXAMINED AND PLACED IN POLICE CUSTODY PURSUANT TO A BOOKING PROCEDURE.

At a pretrial hearing, the Alameda County Superior Court denied respondent Smith's motion to suppress evidence of an address and keys that police took from Smith's mother's purse and wallet which were in policy custody following her arrest and booking. The California Court of Appeal reversed the lower court order, holding that the examination of the purse and wallet could not be justified as a part of the booking procedure since the booking process had been completed and that the examination did not fall

within any other exception to the "Warrant requirement" of the Fourth Amendment. The state Court of Appeal further held that because the purpose of the officer's inspection a "second time was to look for at least one item not previously noted (the current address), and items whose evidentiary value had not been previously appreciated (the address and keys)", the inspection was a "search" under the Fourth Amendment and an unconstitutional "intrusion into whatever vestige of privacy remained" in the mother's purse and wallet under the Fourth Amendment. *People v. Smith,* 103 Cal.App.3d at 845, 163 Cal.Rptr. at 325 (1980).

In *United States v. Edwards,* 415 U.S. 800 (1973), this Court declared, "[o]nce the accused is lawfully arrested and is in custody, the effects in his possession at the place of detention that were subject to search at the time and place of his arrest may lawfully be searched and seized without a warrant even though a substantial period of time has elapsed between the arrest and subsequent administrative process, on the one hand, and the taking of the property for use as evidence, on the other. This is true where the clothing or effects are immediately seized upon arrival at the jail, held under the defendant's name in the 'property room' of the jail, and at a later time searched and taken for use at the subsequent criminal trial. [footnote omitted]" *Id.* at 807.

The People of the State of California believe that here, "the items in question have been exposed to police view under unobjectionable circumstances, so that no reasonable expectation of privacy is breached by an officer's taking a second look at matter with respect to which [the] expectation of privacy already has been at least partially

dissipated." *United States v. Grill,* 484 F.2d 990 (5th Cir. 1973), *cert. denied* 416 U.S. 989. An illegal search only violates the constitutional rights of those who have "a legitimate expectation of privacy in the invaded place." *Rakas v. Illinois,* 439 U.S. 128, 140 (1978).

Though respondent's mother may well have retained some "vestige of privacy" in her personal effects *as to the general public,* she retained no reasonable or legitimate expectation of freedom from renewed police examination of her wallet and purse which had been previously examined by them and which were in their lawful custody. This conclusion is particularly warranted in the setting of a public jail. There is little reasonable expectation of privacy from police view in a jail. Though it may well be that the Fourth Amendment reaches its apogee in the home (cf. *Payton v. New York,* U.S. , 48 U.S.L.W. 4375 (1980)), such considerations do not apply in a jail and most particularly to small items which have already been examined in detail. Therefore, "for at least a reasonable time and to a reasonable extent", the Warrant Clause of the Fourth Amendment does not apply to post-arrest seizures of an arrestee's effects such as occurred under the circumstances here. *United States v. De Leo,* 422 F.2d 487, 493 (1st Cir. 1970), *cert. denied* 397 U.S. 1037; *United States v. Edwards, supra,* 415 U.S. at 808-809.

Though a search warrant is not required here, it may well be that "second look" examinations of an arrestee's personal effects by police are still subject to the "Fourth Amendment's general proscription against unreasonable searches and seizures." *United States v. Edwards, supra,* 415 U.S. at 808 n.9. The record, however, demonstrates that

the intrusion was neither shocking nor unreasonable in its manner of execution or frequency. As stated by the *Edwards* majority, "[I]ndeed it is difficult to perceive what is unreasonable about the police's examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as the result of a lawful arrest." 415 U.S. at 806. Moreover, it is noteworthy that Officer Stafstrom's "second look", as in *Edwards,* occurred on the morning following the arrest and initial booking of the accused. Cf. 415 U.S. at 801-802.

The California Court of Appeal stated that the cases in "other jurisdictions"[2] are in conflict on the issue here and that this Court in *Edwards* did not resolve the question. It is clear that there is some conflict in the Federal Circuits and to the extent that the latter assertion is true, this Court should grant certiorari to settle the matter. Petitioner submits that the reasoning of *Edwards* is compelling and that police were entitled to examine the personal effects of Ms. Harris already in their possession without the necessity of obtaining a warrant.

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[2]Several Federal Circuit Court decisions support our position, including *United States v. Sheehan,* 583 F.2d 30, 32 (1st Cir. 1978), *United States v. Jenkins,* 496 F.2d 57, 73-74 (2d Cir. 1974), *cert. denied* 420 U.S. 925, *United States v. Grill, supra,* 484 F.2d 990 (5th Cir. 1973), *United States v. Oaxaca,* 569 F.2d 518, 523 (9th Cir. 1978), *cert. denied* 439 U.S. 926. See, *contra Brett v. United States,* 412 F.2d 401 (5th Cir. 1969).

CONCLUSION

For the foregoing reasons, it is respectfully requested that the petition for writ of certiorari be granted.

Dated: August 11, 1980

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(Appendices follow)

Appendices

Appendix A

In the Court of Appeal of the State of California
First Appellate District, Division Three

1 Crim. 19411
(Sup. Ct. No. 67239)

People of the State of California,
Plaintiff and Respondent,
vs.
Almon Boyd Smith,
Defendant and Appellant.

[Filed Mar. 27, 1980]

Appellant Almon Boyd Smith was convicted on January 26, 1979, after a plea of nolo contendere, of one count of embezzlement in violation of Penal Code section 507. On March 1, 1979, he was given a suspended sentence of three years during which time he was placed on probation with one year in county jail as a condition thereof. Pursuant to Penal Code section 1538.5 subdivision (m) Smith appeals the trial court's denial of his motion to suppress evidence seized in a post-booking search of his mother's wallet, contending that the search was unconstitutional and a violation of the jail authorities' statutory duty to safeguard her property under Government Code section 26640. As one against whom the fruits of that search were intro-

duced into evidence, Smith's standing to make this challenge is settled under California law.[1]

On or about January 6, 1978, appellant rented a 1977 two-door blue Ford LTD, license number 617 SCY, from Budget Rent-A-Car in Berkeley. The car was never returned. On his rental application, Smith listed his address as 1175 University Avenue, No. 47, a room at the Berkeley Plaza Motel. Budget Rent-A-Car filed an embezzlement report with the police and Officer Michael Stafstrom was assigned to investigate. Some time prior to February 13, 1978, Officer Stafstrom went over to the Berkeley Plaza Motel and spoke to the manager, Don Hubbs. Hubbs told him that appellant and his mother, Zeel Harris, had begun renting room No. 47 in August, 1977, but that they had moved out some time ago. He also told the officer that Smith and Harris had arrived in August in a cream-colored Chevrolet, but that later he had seen them driving a blue Ford LTD.

Until February 13, 1979, all of Officer Stafstrom's efforts to locate Smith and the Ford LTD failed. On that date, however, he learned that Zeel Harris had been arrested the night before on a warrant out of Santa Ana charging her with embezzlement and grand theft of a 1977 cream-colored Chevrolet and that she had been booked into Berkeley city jail. Shortly thereafter, at the prisoners' property facility where Harris' belongings were stored, Officer Stafstrom conducted a warrantless search of her purse, hoping 1) to ascertain her current address in an effort to find Smith and 2) to find the keys to the stolen Chevrolet.

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[1]*People v. Gale* (1973) 9 Cal.3d 788, 793 [108 Cal.Rptr. 852, 511 P.2d 1204]; Kaplan v. Superior Court (1971) 6 Cal.3d 150, 156-162 [198 Cal.Rptr. 649, 491 P.2d 1] and cases cited.

He was successful on both counts. Inside the purse was a wallet which contained the Chevrolet keys and Harris' driver's license. On the back of the license was written an address on Grizzly Peak Boulevard. The officer saw the Ford LTD in plain view at that address and had it seized and towed.

Smith seeks to suppress the Ford LTD on the grounds that Stafstrom's search did not fall within any recognized exception to the warrant requirement. His appeal thus presents a question novel to this jurisdiction: once an arrestee's personal effects have been inventoried and inspected during a booking search, do they remain "fair game,"[2] that is, subject to warrantless searches without probable cause[3] for the period of incarceration?

Whenever one embarks on any warrantless search analysis, one must keep the following words uppermost in mind: "'[S]earches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" (*Coolidge v. New Hampshire* (1971) 403 U.S. 443, 454-55 [29 L.Ed.2d 564, 576, 91 S.Ct. 2022]; *Katz v. United States* (1967) 389 U.S. 347, 357 [19 L.Ed.2d 576, 585, 88 S. Ct. 507].)

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[2]See discussion of this subject in 2 LaFave, Search and Seizure, section 5.3(b), hereinafter referred to as LaFave.

[3]Respondent does not contend that Stafstrom had probable cause to search Harris' purse. The district attorney argued at trial that Stafstrom was entitled to search without it.

The so-called booking search exception has been upheld repeatedly, usually on a theory that it is really a search incident to arrest with an inconsequential time lag. (*People v. Ross* (1967) 67 Cal.2d 64, 70-71 [60 Cal.Rptr. 254, 429 P.2d 606], reversed on other grounds *sub nom. Ross v. California* (1968) 391 U.S. 470 [20 L.Ed.2d 750, 88 S.Ct. 1850]; *People v. Superior Court (Murray)* (1973) 30 Cal.App.3d 257, 263 [106 Cal.Rptr. 211] and cases cited; *see, People v. Maher* (1976) 17 Cal.3d 196, 201 [130 Cal.Rptr. 508, 550 P.2d 1044].) This was the analysis used by the Supreme Court in *United States v. Edwards* (1973) 415 U.S. 800, 803 [39 L.Ed.2d 771, 775-776, 94 S.Ct. 1234].

Edwards was based on the following facts. Defendant had been arrested late at night on suspicion of having attempted to break into a post office. He was taken to the local jail facility and locked into a cell, but because the authorities had no jail garb immediately available, he was allowed to retain his clothing overnight. Investigation at the post office revealed that the instrument used to pry open the window had left some paint chips on the sill. Edwards' clothes were taken from him the next morning, examined, and found to contain paint chips matching those found at the scene. The chips were admitted into evidence.

The *Edwards* majority found in that case that the administrative booking process incident to custodial arrest *had not ended* by the time Edwards was put in his cell. (415 U.S. at p. 804 [39 L.Ed.2d at p. 776].) It therefore felt constrained to hold that seizure of his street clothes involved "no more than taking from respondent the effects *in his immediate possession* that constituted evidence of a crime. This was and is a normal incident of a custodial

arrest, and reasonable delay in effectuating it does not change the fact that Edwards was no more imposed upon than he could have been at the time and place of arrest or immediately upon arrival at the place of detention." (415 U.S. at p. 805 [39 L.Ed.2d at p. 777]; *italics* added.)

A clear distinction may thus be drawn between *Edwards* and the case at bar. There is no dispute that here the booking process had been wholly completed. In addition, Harris' wallet was no longer in her possession but had been safely stored in a locked container.[4] It is settled that search incident to arrest is limited to the arrestee's person and "the area from within which he might gain possession of a weapon or destructible evidence." (*Chimel v. California* (1969) 395 U.S. 752, 763 [23 L.Ed.2d 685, 694, 89 S.Ct. 2034]; *People v. Flores* (1979) 100 Cal.App.3d 221 [160 Cal.Rptr. 839].) In *Edwards* this requirement was satisfied. Here it was not.

We express no opinion regarding the continued validity of non-consensual booking searches after *Chadwick*[5] and its progeny. It is unnecessary that we do so, since even if the initial intrusion into Harris' purse can be upheld as coming within a booking search exception, Officer Stafstrom's search cannot be similarly characterized.

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[4]LaFave suggests that *Edwards*' reliance on the incident to arrest exception is misplaced and that the case can better be explained as involving a plain view seizure, since respondent's clothes were still on his back. (LaFave, *supra* at p. 314.)

[5]*U.S. v. Chadwick* (1977) 433 U.S. 1 [53 L.Ed.2d 538, 97 S.Ct. 2476]. See also *People v. Minjares* (1979) 24 Cal.3d 410 [153 Cal. Rptr. 224, 591 P.2d 514]; *People v. Pace* (1979) 92 Cal.App.3d 199 [154 Cal.Rptr. 811]; *People v. Flores* (1979) 100 Cal.App.3d 221, 232 fn. 5 [160 Cal.Rptr. 839] (dictum). Cf., *People v. Rucker* (1980) 26 Cal.3d 368 [162 Cal.Rptr. 13, 605 P.2d 843], permissible scope of inquiries during booking procedure.

As with other exceptions to the warrant requirement, any authorization to search pursuant to the booking process must be limited to " 'the circumstances which rendered its initiation permissible.' " (*Chimel v. California* (1969) 395 U.S. 752 [23 L.Ed.2d 685, 89 S.Ct. 2034].) Here all purposes which might underlie a booking search exception had been fully served the night before the warrantless search at issue here. Indeed, Officer Stafstrom himself testified that his only reason for conducting the second search was to look for evidence. Therefore, even assuming that the first intrusion was lawful, since Stafstrom did not conduct a booking search, we must find another exception to the warrant requirement in order to justify his actions.

The only argument to be made is that Harris' privacy interest in the items seized by Stafstrom was so dissipated by the first search as to render the "second look" inconsequential, i.e., *not a search*, from the standpoint of the Fourth Amendment.

Cases in other jurisdictions in which the issue has been considered are in conflict.[6] The question is not settled by *Edwards*.[7] We conclude that since the officer's purpose in

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[6]See *United States v. Jenkins* (2d Cir. 1974) 496 F.2d 57, cert. den. 420 U.S. 925 [43 L.Ed.2d 394, 95 S.Ct. 119]; *United States v. Grill* (5th Cir. 1973) 484 F.2d 990. Contrast, *Brett v. United States* (5th Cir. 1969) 412 F.2d 401; *People v. Trudeau* (1971) 385 Mich. 276 [187 N.W.2d 890].

[7]Despite dictum that it would permit retrieval of property seized on booking, but thereafter stored in the property room. (415 U.S. 800, 807 [39 L.Ed.2d 771, 777-778]. LaFave at p. 319.) It is not clear whether the *Edwards* court was referring exclusively to property whose evidentiary value is recognized at the initial search stage or whether it would also permit a second, or fiftieth, look at property which originally appeared innocuous.

inspecting Harris' purse and wallet a second time was to look for at least one item not previously noted (the current address), and items whose evidentiary value had not been previously appreciated (the address and keys), the inspection involved an intrusion into whatever vestige of privacy remained to Harris and thus did constitute a search.

To declare that arrestees have no further privacy interest in their personal property once it is subjected to a booking search would mean that all accused persons, whether subsequently found innocent or guilty, would be subject to having their effects rummaged through at will during the entire period of their incarceration. This is a result we cannot condone.

We find that the warrantless search here was unlawful and the evidence secured as a result of the search should have been suppressed. The judgment of conviction is also reversed. (*Wong Sun v. United States* (1963) 371 U.S. 471 [9 L.Ed.2d 441, 83 S.Ct. 407].)

CERTIFIED FOR PUBLICATION.

Takei, J.*

I CONCUR:

White, P.J.

I concur in the judgment.

Feinberg, J.

1 Crim. 19411

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*Assigned by the Chairperson of the Judicial Council.

Appendix B

Order Due
May 23, 1980

ORDER DENYING HEARING
After Judgment by the Court of Appeal
1st District, Division 3, Crim. No. 19411

In the Supreme Court of the State of California

In Bank

[Filed May 22, 1980]

People
v.
Smith

Respondent's petition for hearing DENIED.

Clark, J., and Richardson, J., are of the opinion that the petition should be granted.

/s/ Bird
Chief Justice